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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,706	09/08/2003	Wallace F. Krueger	03160	3173

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EXAMINER

BASHORE, ALAIN L

ART UNIT PAPER NUMBER

1762

DATE MAILED: 09/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/658,706

Applicant(s)

KRUEGER, WALLACE F.

Examiner

Alain L. Bashore

Art Unit

1762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 118-120 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 118-120 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 118 and 120 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is claimed a small diameter tube. The term "small" is considered a relative term and therefore vague and indefinite.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 118-119 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson in view of LoPresti et al.

Johnson discloses a method for applying a fluid to an object including providing a fluid in a container, providing an applicator tip,(having applicator surface) to apply fluid. The fluid is supplied through a small diameter tube being in fluid communication between the container and tip. The fluid is pumped by a pumped (fig 1; col 7, lines 45-64).

Since one with ordinary skill in the art would not want spillage, there would be inherently present "said fluid only contacts said container, small diameter tube, said applicator surface and said object".

Since the pump disclosed is held fixedly within fluid communication, there is present a "pump that engages the exterior surface of said small diameter tube" by virtue that any tube must be engaged at least with the housing (or part thereof) of a pump.

There is not disclosed to Johnson:

the small diameter tube: "extending into said container" or, "that can be removed from the container".

LoPresti et al discloses the small diameter tube extending into said container and that can be removed from the container (fig 6; col 3, lines 6-18).

It would have been obvious to one with ordinary skill in the art to include the small diameter tube extending into said container because LoPresti et al teaches use of pressure differentiation for flow fluid movement purposes (col 4, lines 63-67).

It would have been obvious to one with ordinary skill in the art to include the small diameter tube that can be removed from the container because LoPresti et al teaches clean-up (col 3, lines 45-50).

5. Claim 120 is rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson in view of LoPresti et al as applied to claims above, and further in view of Figini et al.

Johnson and LoPresti et al do not disclose tube constriction by pump engagement to restrict flow.

Figini et al discloses tube constriction by pump engagement to restrict flow (fig 2).

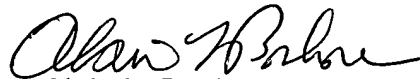
It would have been obvious to one with ordinary skill in the art to include tube constriction by pump engagement to restrict flow because Figini et al discloses optimal application (col 1, lines 19-24).

***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alain L. Bashore whose telephone number is 571-272-6739. The examiner can normally be reached on about 7:30 am to 5:00 pm (Mon. thru Thurs.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Meeks can be reached on 571-272-1423. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Alain L. Bashore  
Primary Examiner  
Art Unit 1762